IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO. 31 OF 2007
IN
SUMMARY SUIT NO. 3267 OF 2006

Suryakant B. Shah. ... Plaintiff.

V/s.

Amico Pesticides Ltd. ... Defendants.

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Mr. Kamal Khatu i/b. Motiwala & Co. for the Plaintiff.
Mr. Subodh Gokhale for the Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.

3RD MAY, 2007.

P.C. :

. The suit under Order 37 of the Code of Civil Procedure, 1908 is based on a claim for goods sold, supplied and delivered. The invoices under which the goods were sold are annexed at Exhibits ‘A’ to ‘G’ of the plaint. The principal amount of the invoices is Rs.5,49,979/-. On 17th March 2003 the Defendant, in a communication to the Plaintiff admitted that an amount of Rs.3,92,854.46 was due and payable and stated that the amount will be paid after confirmation was received from

the Plaintiff. This was followed by a similar letter dated 9th October 2003. The suit was lodged within a period of 3 years thereafter on 27th September 2006.

2. In the affidavit in reply, it has been admitted in paragraph 6 that the value of the goods sold by the Plaintiff was Rs.4,93,819/-. However, it has been submitted that this is subject to a debit of an extra payment of Rs.17,000/- The details in respect of the alleged extra payment of Rs.17,000/- have not been stated. Similarly, in paragraph 8 it has been averred that an amount of Rs.83,949/- was paid to a creditor of the Plaintiff, on the request of the Plaintiff. Here again no details whatsoever have been set out. Be that as it may, I am of the view that having regard to the admission contained in Exhibits ‘T’ and ‘U’ which are letters of the Defendants, acknowledging that an amount of Rs.3,92,854/- is due and payable, it would be appropriate if leave to defend the suit is granted subject to a condition of deposit.

3. The Defendants are accordingly granted leave to defend the suit conditional on a deposit of an amount of

Rs.3,93,000/- within a period of eight weeks from today. The Plaintiff would be at liberty to withdraw the amount upon deposit subject to furnishing security to the satisfaction of the Prothonotary and Senior Master and upon filing an undertaking that the Plaintiff shall bring back the monies so withdrawn with interest at such rate if so directed by this Court at the trial of the suit. The Defendant would be at liberty to file a written statement within a period of eight weeks from the date of deposit.

4. The Summons for Judgment is accordingly disposed of.